2023:PHHC:112672

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRM-M-18752-2012 (O&M)
Date of decision: 24.08.2023

Aditi Pandya .....Petitioner

Versus

M/s Gandhi & Sons and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. D.S. Bhinder, Advocate
for the petitioner.

Mr. Abhishek Sharma, Advocate
for the respondents.

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MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is invoking the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. for quashing of Complaint No.499 dated 12.05.2011 (Annexure P-1) along with summoning order dated 26.03.2012 (Annexure P-3) passed by learned SJMIC, Bathinda vide which she has been summoned to face trial in place of her husband Parashar Pandya, who has since expired.

2. The complaint in question was instituted by respondent No.1 under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') against the husband of the petitioner Parashar Pandya (since deceased) and against respondent No.2 company M/s Cropcare Biochem Pvt. Ltd. It was alleged that the husband of the petitioner Parashar Pandya was the Managing Director of accused No.2 company and had issued cheque No.492143 dated 31.12.2010 in the sum of ₹2,05,830/-, however, the said cheque was dishonoured on account of “Funds Insufficient” vide endorsement dated

22.03.2011. In the complaint it was specifically averred that Parashar Pandya was in charge and responsible for the day to day business of the accused company. Initially, learned Special Judicial Magistrate, Bathinda vide order dated 13.05.2011 summoned accused No.1 i.e. Parashar Pandya and accused No.2 i.e. M/s Cropcare Biochem Pvt. Ltd. After the demise of Parashar Pandya on 16.08.2011, an application was moved by the respondent-complainant seeking substitution of the petitioner in place of her deceased husband Parashar Pandya. The said application was allowed vide impugned order dated 26.03.2012.

3. Learned counsel appearing for the petitioner has inter alia contended that a perusal of the allegations levelled in the complaint (Annexure P-1) reveal that complaint in question had been instituted only against Parashar Pandya and accused No.2 Company. There was no allegation much less by way of a whisper against the petitioner nor was there any specific averment made in the complaint against the petitioner of being in charge or being accountable for the day to day affairs of the accused company. It has been submitted that it was also a matter of record that the petitioner had not even been named as an accused in the complaint. However, following the demise of her husband Parashar Pandya, who even as per the allegations levelled in the complaint, was in charge and responsible of the day to day affairs of the accused No.2 company, it was highly inappropriate and against settled law to have substituted the petitioner as accused No.1 in place of her deceased husband. It has, thus, been submitted that in the absence of any specific averments made in the complaint against the petitioner, no criminal liability could be fastened upon her. Learned counsel has

further submitted that it was also a matter of record that the statutory notice with respect to the dishonour of the cheque which was one of the essential ingredients for proceeding under Section 138 of the NI Act, had never been served upon the petitioner but only to Parashar Pandya and accused No.2 company. It has still further been submitted that it was also a matter of record that the petitioner was not even a signatory to the cheque in question nor did she have any knowledge about the transaction in question. In support of his submissions that no criminal liability could be fastened upon the petitioner in the absence of any specific averments made qua her, learned counsel has placed reliance upon ***SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla and another : 2005 (8) SCC 89***.

4. Per contra, learned counsel for the respondents while opposing the prayer and submissions made by the counsel opposite has not disputed that there were no specific averments much less any allegations levelled against the petitioner in the complaint in question. He has also not disputed that the petitioner was not a signatory to the cheque in question. However, he submits that as per the DIR Form, the petitioner was an active Director of the company and it was a matter of record that after the demise of her husband, Parashar Pandya, she was now in complete control of the affairs of the company. It has been still further submitted that being a Director of the company, it could not be believed that the cheque in question would have been issued without her consent and she would have been unaware about its issuance. Therefore, learned counsel for the respondents has asserted that the petitioner would be liable under Section 141 of the NI Act. A prayer

has, therefore, been made that the instant petition be dismissed moreso, since proceedings under Section 138 of the NI Act are quasi criminal in nature for which legal representatives of an accused can be impleaded after his demise.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. Before proceeding further, it would be apposite to reproduce Section 141 of the NI Act which reads as under:-

> *"**141. Offences by companies.** —*
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> *(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: 22 [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]*
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> *(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*
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> *XXXX XXXX XXXX"*

7. While laying down the parameters for fastening criminal liability under Section 141 of the NIC Act, the Hon'ble Supreme Court

in ***SMS Pharmaceuticals's case (supra)*** has held as under:-

> *"20. To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a persons can be subjected to criminal process. A liability under Section 141 of the Act is sought to be fastened vicariously on a person connected with a Company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. Section 141 of the Act contains the requirements for making a person liable under the said provision. That respondent falls within parameters of Section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within Section 141 he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of Section 141. Even a non director can be liable under Section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.*
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> *21. In view of the above discussion, our answers to the questions posed in the Reference are as under:*
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> *(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.*
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> *(b) The answer to question posed in sub-para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.*
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> *(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the*

> *company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under Section 141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act and will be covered under sub-section (2) of Section 141."*

8. Adverting to the case in hand, a perusal of the complaint annexed as Annexure P-1, reveals that at the first instance, neither the petitioner was arrayed as an accused when the complaint was instituted nor any averment made by the complainant even by way of a whisper that the petitioner was responsible in any manner for the day to day affairs of the company at the time of the issuance of the cheque in question and the date of its dishonour. Still further, it was only after the demise of the petitioner's husband namely, Parashar Pandya, an application for her substitution as an accused in place of her husband, was moved before the Trial Court.

9. It needs to be reiterated and as has been held by the Hon'ble Supreme Court in a catena of judgments, that issuance of process and summoning of an accused in a criminal case is a serious matter and cannot be set into motion as a matter of course. Though Section 141 of the NI Act provides for vicarious liability for the offence under Section 138 of the NI Act, however, the liability being criminal in nature can certainly not be transferred to a person merely on account of him/her being a legal heir of the main accused who has expired.

10. Hence, in the facts and circumstances as enumerated hereinabove, coupled with the ratio of settled by the Hon'ble Supreme

Court, this Court has no hesitation in holding that in the absence of any specific averments qua her role in the day to day affairs of the accused company or categoric allegations against the petitioner in the complaint in question as to what role she had played in the transaction in question, summoning order Annexure P-3 dated 26.03.2012 passed by learned Chief Judicial Magistrate, Bathinda cannot be sustained and deserves to be set aside. Accordingly, the present petition is allowed and Complaint No.499 dated 12.05.2011 Annexure (Annexure P-1) along with summoning order dated 26.03.2012 (Annexure P-3) are quashed qua the petitioner only.

24.08.2023 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No